

FOR THE DISTRICT OF PENNSYLVANIA

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Inc., Represented By Rafael X. :
 Zahralddin . :
 :
 F) Motion For Sanctions For :
 Violation Of The Automatic Stay :
 Filed By Stream Tv Networks, Inc. :
 Represented By Rafael X. :
 Zahralddin . :
 :

BEFORE THE HONORABLE MAGDELINE D. COLEMAN
 UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:	Rafael X. Zahralddin Lewis Brisbois Bisgaard & Smith 500 Delaware Avenue, Suite 700 Wilmington, DE 19801 302-985-6004
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1 NOVEMBER 15, 2023 12:03 P.M.

2 THE BAILIFF: All rise.

3 THE COURT: Good afternoon.

4 MR. ZAHRALDDIN: Good afternoon, Your Honor.

5 THE COURT: Okay. Hold on one second, counsel.

6 MR. ZAHRALDDIN: Sure.

7 THE COURT: All right, counsel, this is the Stream TV

8 Technovative matter and currently, there are five matters

9 listed, six matters listed for today.

10 Counsel for the Debtor?

11 MR. ZAHRALDDIN: Morning, Your Honor. Rafael

12 Zahralddin from Lewis Brisbois Bisgaard & Smith for the

13 Debtors. Can we begin with the disputed fee application,

14 because I believe that one doesn't require any sort of other

15 documents, et cetera?

16 THE COURT: Is a legal argument or is it --

17 MR. ZAHRALDDIN: Legal argument, yes.

18 THE COURT: Well --

19 MR. ZAHRALDDIN: Or would -- I -- we got a call this

20 morning from your courtroom deputy indicated that you wanted to

21 just hear legal argument and hand up of documents. We do

22 have --

23 THE COURT: Right. But I guess what sort of -- this

24 was not listed as a trial matter.

25 MR. ZAHRALDDIN: Correct.

1 THE COURT: And so, when someone called my courtroom
2 deputy and said, do we have to appear in person, the response
3 is, is if you -- which is her standard response, if you
4 anticipate evidence, then you need to come in. Okay. And so,
5 I'm assuming that's why all of you are here was because you
6 anticipate putting some evidence in.

7 MR. ZAHRALDDIN: When we scheduled this over -- I
8 can't remember how long ago, Ms. Godfrey gave us, we scheduled
9 it with the assumption that we may need witnesses and she asked
10 me at that time. We actually noticed it that way --

11 THE COURT: And I don't --

12 MR. ZAHRALDDIN: -- but which is --

13 THE COURT: -- why, because I had a trial scheduled
14 at 1:00. There's no way this would have gone from 11:30 to 1.
15 The Trujillo -- Truji -- yeah. It settled, but it was
16 scheduled for 1:00.

17 MR. ZAHRALDDIN: I'm not sure, Your Honor.

18 THE COURT: So I don't know -- so on my calendar, I
19 didn't even have Stream as a evidentiary matter, when I looked
20 at my calendar, but the answer -- if you guys call and ask
21 her -- and I was discussing it with my staff about the notice
22 that's on the website and it's not clear what that means. It
23 just says the -- if you -- if you evidence (sic), you have to
24 come in and actually, they're saying all hearings, but my
25 position is, unless it's here -- evidence, you don't have to

1 come in here. So --

2 MR. ZAHRALDDIN: We'll make sure to do that next
3 time, Your Honor. We --

4 THE COURT: So -- yeah, unless we have an actual
5 trial, where -- because if we're going to have a trial or we're
6 going to have -- take evidence, it's always going to be not in
7 the connection with a -- with my hearing list because there's
8 no way I can do my hearing list and get evidence in. And it
9 also -- if it takes more than 30 minutes, I'm not hearing in
10 any way.

11 MR. ZAHRALDDIN: I hear you.

12 THE COURT: So I think there's a lot of just kind of
13 miscuing today and I hate that everybody had to travel here,
14 but unfortunately, I have a hard stop at 1:00.

15 MR. ZAHRALDDIN: Okay.

16 THE COURT: So that's not -- I can't even go beyond
17 that.

18 MR. ZAHRALDDIN: Your Honor, which matters do you
19 have? Because I think the only matters we have up right now
20 that the Debtors had noticed were the disputed fee application,
21 exclusivity, an employee motion, the retention of Thomas Park
22 as the CFO and then our enforcement of the stay, which I think
23 was the genesis of why we scheduled this hearing because it had
24 been in abeyance for quite some time and you directed us in
25 court to set the hearing for that, which we did.

1 MR. ZAHRALDDIN: So this is what I have. I have A,
2 the A matter is the employee motion, where they wanted to pay
3 some prepetition wages and the B and E matter were the Park
4 retention motions. The C matter was the exclusivity motion.
5 The D matter is the fee application and the F --

6 MR. ZAHRALDDIN: Okay.

7 THE COURT: -- is the stay violation.

8 MR. ZAHRALDDIN: Okay.

9 THE COURT: So what I had thought that this -- what I
10 would definitely be able to hear was exclusivity. That's
11 simply a legal argument. With respect to the fee application,
12 to the extent there was some objection, there was no way I was
13 going to look at that, if there's objections. With respect to
14 the -- so let me -- exclusivity, I thought was on the table
15 today.

16 MR. ZAHRALDDIN: Uh-huh.

17 THE COURT: The employee motion, I'm not even sure
18 because that seems so old and it -- when I read it, it didn't
19 make any sense to me. The fee application I didn't think would
20 be on because there is a dispute. The stay violation I didn't
21 think was on because I was going to have to take some evidence,
22 unless the parties relied on some other record. And the B and
23 E, Park retention -- so the only thing I thought we might get
24 to today was the exclusivity motion and maybe the Park motion,
25 if it didn't require evidence.

1 MR. ZAHRALDDIN: Well --

2 THE COURT: If it did, then the employee motion.
3 Those two are only legal arguments.

4 MR. ZAHRALDDIN: Your Honor, I -- let me see if I can
5 illuminate a little bit on this. I would like to see the fee
6 application heard. If Your Honor wishes to have a hearing on
7 the only two line items that were discussed, which were --
8 opposing counsel had an issue with the fact that we prepared a
9 cash management motion, which we discussed with the U.S.
10 Trustee. And then we also had a second noticing motion, both
11 of which we put aside because we had other things we needed to
12 get done.

13 We wanted to see how many parties filed proofs of
14 claim, how many did -- so those amount to, I think roughly from
15 memory, under \$10,000, but I would like to get a determination
16 on the rest of the fee app, which doesn't have a specific
17 objection to it, other than there were broader objections that
18 we believe warrant -- because honestly, there are clear
19 indications on the record of where we're getting paid, the
20 benefit to the estate.

21 I've never had anyone argue that you shouldn't get
22 paid because we don't like the result or we don't believe that
23 you are -- I mean, we're a fiduciary. We have obligations. So
24 I would like to at least get something on that. We've been
25 waiting quite some time past --

1 THE COURT: When did you file this fee application?

2 MR. ZAHRALDDIN: We filed it at least 30 days ago. I
3 have to double-check.

4 THE COURT: So that's -- so you have a hearing within
5 30 days and you say you've been waiting long? You filed this
6 September -- when Mr. Caponi filed his objection on September
7 26th.

8 MR. ZAHRALDDIN: So it would have been 14 days prior
9 to that is when we filed it.

10 THE COURT: Yes, but I wouldn't have scheduled a
11 hearing. First of all, we wait 14 days for them to respond. I
12 think a fee application, it may be seven days. I don't know
13 how long it is.

14 MR. ZAHRALDDIN: It's 14, Your Honor.

15 THE COURT: And then -- so we wouldn't have done
16 anything with this for 14 days and once a objection is filed,
17 which is September 26th, I think, Mr. Caponi, you filed your
18 objection. We would have filed a hearing of first listing on
19 this now, maybe October. If you did it September, we would
20 have scheduled a hearing 30 days ago. So --

21 MR. ZAHRALDDIN: I think that's what we did, but --

22 THE COURT: Right. So I don't see how this is --
23 you've been waiting quite some time. This is only the -- I
24 haven't even had a first hearing on this.

25 MR. ZAHRALDDIN: Okay.

1 THE COURT: Got continued. Okay. So --

2 MR. ZAHRALDDIN: Well, Your Honor, we'll --

3 THE COURT: -- so if I'm going to hear specific
4 objections and I need some testimony, there's no way I'm doing
5 that today, but I have to hear from Mr. Caponi, who stood up.

6 MR. ZAHRALDDIN: I'd like to cover the other ones
7 first before Mr. Caponi comes, if you don't mind.

8 THE COURT: Well, no, let's do one at a time because
9 then I'm a bit confused today.

10 MR. ZAHRALDDIN: Go ahead. Go ahead.

11 THE COURT: So Mr. Caponi, what's your position with
12 respect to the fee application?

13 MR. CAPONI: Your Honor, we filed an emergency motion
14 to hold all of this in abeyance. I just want to mention that
15 was on the list.

16 THE COURT: Yeah. Well, obviously I'm not granting
17 that because I'm saying I'm going forward with -- and I forgot
18 that, that wa -- I apologize. I -- with respect to holding
19 things in abeyance, there was a reason why I'm not going to do
20 that. That fee application is going to be addressed no matter
21 what I decide, no matter what I decide, whether I decide to
22 grant your motion, whether I decide to appoint someone,
23 whether -- doesn't matter what I do, the fee application has to
24 be addressed. So I wasn't going to put that in abeyance.

25 With respect to the exclusivity motion, I may not --

1 it expired yesterday, by the way. So I need to figure out --
2 let's at least continue some deadlines. It doesn't mean
3 anything, because my ruling isn't going to have any effect on
4 that imme -- I mean, until I rule. So that one, I said, no,
5 I'm going to go forward with that.

6 The Park retention motion, I wasn't quite sure about
7 that because the Debtors are con -- the Debtor, at least with
8 respect to Stream, there's no issue that Stream has the
9 authority to file. The issue is whether they should be here,
10 whether it's a good faith filing or whether you should just --
11 I should dismiss, convert or whatever. So to the extent they
12 continue to operate, I need to figure out do they need Mr.
13 Parks. So that one was on the table.

14 The employee motion, same thing. I don't know. Do
15 they need the employees? Do they even have employees? So that
16 one I said would stay on the table, so that was the reason why
17 I did not think it made sense. And with respect to violation
18 of the stay, even if I dismissed their case, the Third Circuit
19 has said you can continue and keep the case open to address
20 violations of the stay.

21 So again, I would ha -- all of these things are
22 things I have with the exception of perhaps the employment
23 motion and the Park retention, no matter what I decide, I have
24 to deal with those. So that's why I didn't want to stay those.

25 MR. CAPONI: We're -- look, we're -- obviously prefer

1 to stay and all will stay whatever the Court wants to stay and
2 we'll address whatever the court wants to address.

3 THE COURT: Right.

4 MR. CAPONI: But there is a -- I don't want to
5 interject, but there are, I think some news I'd like to impart
6 upon the Court that may impact how the Court wants to handle
7 all of this, but I'd like to address that early on, but I
8 don't -- if you want to continue.

9 THE COURT: Well, no, if you think it emp -- what is
10 it?

11 MR. ZAHRALDDIN: I have no idea what this news is,
12 because we haven't been told.

13 THE COURT: Well, did you share it with opposing
14 counsel?

15 MR. CAPONI: No, I'm sharing it with everybody right
16 now.

17 THE COURT: Mr. Caponi, come on.

18 MR. CAPONI: Your Honor, it has nothing to do with
19 you. I'm not making a motion. I'm just imparting information.

20 THE COURT: But don't you think it would make sense
21 to impart it to everybody before you share it with the Court?
22 Because then you catch them off guard. I don't know how
23 they're going to respond. I don't care when you tell me.

24 MR. CAPONI: Okay. And Your Honor --

25 THE COURT: Go ahead. What is the --

1 MR. CAPONI: Go ahead.

2 THE COURT: go ahead.

3 MR. CAPONI: As the Court's been aware, my client --
4 I -- look, I represent Hawk --

5 THE COURT: Uh-huh.

6 MR. CAPONI: -- as secured lender, who speaks on
7 behalf of a lot of the investors. As the Court's aware, those
8 investors have been paying for Stream and its assets long
9 before the bankruptcy for, you know, many years. The burn rate
10 is substantial. And you know, the Court -- we've been down
11 that road. I'm not going to rehash it.

12 THE COURT: Uh-huh.

13 MR. CAPONI: The -- when the bankruptcy was filed,
14 the advice we give our clients was bankruptcy provides
15 certainty, transparency, oversight and there are some benefits
16 to being in bankruptcy.

17 THE COURT: Uh-huh.

18 MR. CAPONI: We filed our motions, you know, the
19 motions the Court referenced regarding the appointment of a
20 trustee, et cetera, at the beginning of this case. This case
21 has been pending for -- or those motions for around eight
22 months. We had hoped that -- and during the pendency of
23 that -- of this proceeding, Your Honor, my client has continued
24 to fund and support SCBV, which is the only thing of value.

25 THE COURT: Uh-huh.

1 MR. CAPONI: As Your Honor's noted, Mr. Callahan's
2 noted, there must be some value here. People are paying for it
3 for it.

4 THE COURT: They're fighting for it.

5 MR. CAPONI: Right. Absolutely, Your Honor. The
6 factoring into our -- now my client's analysis and the
7 investor's analysis were that the benefits of the bankruptcy,
8 transparency, oversight, et cetera, would streamline the
9 process and that the Debtor would act rationally and want to
10 get these gating issues resolved. As the Court has noted,
11 there's been a tremendous expenditure of resources. The
12 resources that my clients have been forced to bear to what we
13 view as a very disorganized estate that has not been focused on
14 emerging but focused on basically a blood feud by Mr. Rajan.

15 The resources that we're spending here are resources
16 that are not available to support the collateral. And I'm just
17 make -- you know, because of this issue, my clients are done.
18 So there's funding that's due towards -- in the next few weeks
19 of SCBV around \$1.2 million. The secured lenders are no longer
20 supporting the collateral and wanted to -- in the Sanche court
21 (phonetic), but because we have been and because I think
22 everyone has been reliant upon that collateral being preserved
23 on my client's nickel, since that --

24 THE COURT: They're not -- right.

25 MR. CAPONI: -- we're going off that cliff, I wanted

1 to make sure that no one said we surprised anybody.

2 THE COURT: Okay.

3 MR. CAPONI: But I got the instructions the other
4 day --

5 THE COURT: Uh-huh.

6 MR. CAPONI: -- to let everyone know that as long --
7 you know, we're done. If -- my clients have not authorized me
8 to make, you know, counter proposals or anything. All I know
9 is as long as Mr. Rajan is in charge of this estate --

10 THE COURT: Right.

11 MR. CAPONI: -- we can no longer fund into a
12 blackhole in this abyss with the burn rate that we've been
13 experiencing --

14 THE COURT: Right.

15 MR. CAPONI: -- and so the return on investment,
16 whatever value is there --

17 THE COURT: The ROI is not there.

18 MR. CAPONI: The ROI is lo -- Elvis has left the
19 building, as you would --

20 THE COURT: All right.

21 MR. CAPONI: -- say, Your Honor.

22 THE COURT: And counsel, what does that mean? With
23 you saying that, I will be perfectly honest. We have devoted
24 and have been devoting all of our time to resolving those
25 outstanding motions.

1 MR. CAPONI: Yeah.

2 THE COURT: Does that mean you guys don't want a
3 ruling and we can -- are you not --

4 MR. CAPONI: No, Your Honor.

5 THE COURT: -- you're withdrawing those?

6 MR. CAPONI: No, Your Honor. My clients are going to
7 continue to vigorously enforce or secure creditor rights.

8 THE COURT: Okay.

9 MR. CAPONI: If the Debtor can preserve the assets,
10 great, we'll take them at the end using our secured creditor
11 rights. If they burn to the ground, we'll sift through the
12 ashes for whatever value is left. I just, again, want to make
13 sure that everyone is aware --

14 THE COURT: So --

15 MR. CAPONI: -- that this unofficial, you know, if
16 you want to call it -- Ms. Westbrook's going to stab me -- dip
17 financing, it's not that --

18 THE COURT: Right.

19 MR. CAPONI: -- but we've been supporting this of
20 funds in one fashion --

21 THE COURT: Advancement --

22 MR. CAPONI: -- other (sic).

23 THE COURT: -- of funds.

24 MR. CAPONI: It's been of funds. And as Your Honor
25 noted, the ROI, these investors given the -- and not -- this is

1 not a knock on the Court. This is just, you know, had the
2 Debtor --

3 THE COURT: This is how it played out, which --

4 MR. CAPONI: Yeah. It's how it played out --

5 THE COURT: -- you know, with us trying to sift
6 through all of the various motions, which for whatever reason
7 got heard when they got heard.

8 MR. CAPONI: Yeah. And Your Honor, if -- the money
9 that was going to us, my clients weren't paying us, they'd be
10 -- it'd be available for the -- this investment, but when you
11 add it all together, the ROI evaporated. So I just want to
12 impart that on the Court for whatever --

13 THE COURT: Right.

14 MR. CAPONI: -- it's worth.

15 THE COURT: I thought it was some decision somewhere.

16 MR. CAPONI: No. No. It's just, again, because I
17 think --

18 THE COURT: So when's the next money due and when is
19 it not --

20 MR. CAPONI: About two weeks.

21 THE COURT: Two weeks.

22 MR. CAPONI: \$1.2 million and you know, as we've said
23 all along --

24 THE COURT: So you're telling me I have two weeks to
25 get a decision in here?

1 MR. CAPONI: That's cash, right, that's due, not
2 promises. And again, in transparency, I'm not a Dutch lawyer,
3 but my understanding is because a big chunk of that money or
4 tax payments, that quickly thereafter, we would expect an
5 insolvency of SCBV in the Netherlands, not initiated by us, but
6 we think that's just a natural consequence.

7 THE COURT: No, well, that's their -- they operate
8 different from us.

9 MR. CAPONI: Yeah, I mean, I think that's just a
10 natural consequence, but --

11 THE COURT: Okay.

12 MR. CAPONI: -- Mr. Colby, did I miss something or
13 say something wrong?

14 THE COURT: Mr. Colby?

15 MR. COLBY: No. If I might, though --

16 THE COURT: Yes.

17 MR. COLBY: -- Your Honor, on behalf of SeeCubic,
18 which by virtue of raising money from its investors has been
19 also bearing a significant burden of this ongoing funding.
20 The -- echo everything Mr. Caponi said, particularly with
21 respect to what we told our clients would be potentially the
22 benefits of this --

23 THE COURT: Which have not come to fruition.

24 MR. COLBY: -- process.

25 THE COURT: I get it.

1 MR. COLBY: Yeah. And I really, really struggled
2 with how to present this to the Court because we didn't want
3 any of it to be perceived as a slight to the Court for this not
4 moving along. We understand we're all a victim of
5 circumstances. But the -- you know, absent, starting to see
6 some of those perceived benefits of bankruptcy --

7 THE COURT: Uh-huh.

8 MR. COLBY: -- the willingness to continue in an
9 indefinite sort of limbo is -- has faded, and the issue, to be
10 completely candid, is that absent a decision on those dating
11 issues, those early motions, the longer that process played
12 out, the more effectively it became akin to denying the
13 motions, because we're here doing all this other stuff that we
14 think shouldn't be done and has proven to be incredibly costly.
15 The Court, I think, just identified a potential solution. And
16 as a former clerk, I know how these things tend to trickle
17 down.

18 THE COURT: Right. And instead of being in --
19 because I have two law clerks. One you never see, who's
20 actually working on all of this --

21 MR. COLBY: Yeah.

22 THE COURT: -- and one who takes notes and you know,
23 there's like three or four of them working on this --

24 MR. COLBY: Yeah.

25 THE COURT: -- and if you're telling me you're done

1 and this is it and I don't have to decide --

2 MR. COLBY: No.

3 THE COURT: -- no, that would be great because we
4 have all -- we have a lot of other matters under advisement
5 that people have gotten pushed back --

6 MR. COLBY: Yeah.

7 THE COURT: -- because we're focusing on this.

8 MR. COLBY: No. I was -- where I was headed was
9 quite the opposite of that and I was trying to do it as
10 diplomatically as possible.

11 THE COURT: And say, can you rule as soon as
12 possible, Judge?

13 MR. COLBY: Yes. I mean, the -- just the nuts and
14 bolts of it are that there's significant amounts due at the end
15 of the month. There's no current appetite to do that.

16 THE COURT: Right.

17 MR. COLBY: I can't make any promises that we can
18 change minds, but the practicalities of it as a result of the
19 Thanksgiving holiday is ordinarily the process of collecting
20 the money and all -- moving it around and all those things
21 would have to be done by like the 22nd in order to get it done
22 by the end of the month. These are not like vendor bills,
23 where you can get a couple of days here and there. It's the
24 tax authorities, it's payroll and the consequences. So what
25 we've -- that's something that could potentially, you know,

1 unlock this problem.

2 THE COURT: Counsel, if you're asking me -- you're
3 going to have a decision by the 22nd, no way.

4 MR. COLBY: Okay.

5 THE COURT: That's not -- we're not -- because we
6 keep getting stopped for other matters --

7 MR. COLBY: Right.

8 THE COURT: -- and that we have to now -- which is
9 why I was not prepared to really do much with these things
10 because now that means that the resources that we are devoting
11 to trying to get out our -- my decision is now being address
12 with -- I mean, I have other matters. Don't get me wrong.

13 MR. COLBY: Of course. Of course. And --

14 THE COURT: You know, but my goal, to be perfectly
15 honest was, you know, the middle of December to the end for a
16 decision. I'm not going into the New Year without this being
17 decided. I will tell you that. So my goal was to have this --
18 presumably, unless I have some other, you know, matters that
19 take up the time, that was our ultimate goal was the middle of
20 December, end of the year.

21 MR. COLBY: That's --

22 THE COURT: That's where I am.

23 MR. COLBY: -- helpful. And I don't know --

24 THE COURT: Hey, I'm not -- you --

25 MR. COLBY: -- that that's going to --

1 THE COURT: -- your clients can make their own
2 decision --

3 MR. COLBY: Yeah.

4 THE COURT: -- based on what they want, but I did not
5 plan to go into the new year with this as a matter under
6 advisement.

7 MR. COLBY: Yeah.

8 THE COURT: Not because I want to start off the new
9 year without that, but it just made more sense to have a
10 decision by the end of the year. And I'll be honest, there are
11 attorneys who will tell you I'm notorious on December 31st
12 issuing a decision and so you guys can deal with it next year.
13 So --

14 MR. COLBY: Oh.

15 THE COURT: -- and big decisions. So that was my
16 goal. I'm -- you know, again, you know, having mini trials and
17 trials, it cuts into our ability --

18 MR. COLBY: Totally.

19 THE COURT: -- to rule by that --

20 MR. COLBY: Totally understand. It takes up all of
21 our time, right? So we very much understand the dynamic there.
22 And just, again, in the spirit of being really upfront about
23 this because the consequences are serious. You know, the fact
24 that we were here today dealing with these motions was somewhat
25 of a precipitating event. It's this view that we have with the

1 investors of why are we talking about, you know, retaining Park
2 when we -- you know, we want a decision on whether or not there
3 should be a trustee or those sorts of things. So it's a little
4 beyond our ability as lawyers to control there.

5 THE COURT: You have clients. I -- you know --

6 MR. COLBY: Yeah.

7 THE COURT: -- I know what it is to have clients, but
8 the point of the matter is, at least with respect to today,
9 there really was no need for anybody to come in here.

10 MR. COLBY: Understood.

11 THE COURT: And there -- so therefore, this has just
12 been -- be perfect -- at least from the Court's perspective, a
13 big boondoggle for today, because I have a personal matter that
14 is very important to me today.

15 MR. COLBY: Well, we wanted to --

16 THE COURT: And I just really don't want to go past a
17 certain time period.

18 MR. COLBY: That's fine. We just happened to be here
19 because we wanted to raise this issue anyway and it's probably
20 better raised in person than via a letter or something or --

21 THE COURT: Or by phone --

22 MR. COLBY: Something that --

23 THE COURT: Or by Zoom.

24 MR. COLBY: Or by phone. Right. Just the on the
25 consequences, to be a little more --

THE COURT: Uh-huh.

MR. COLBY: -- specific. They are serious and they
issues we've been spending a lot of time on recently.

THE COURT: Uh-huh.

MR. COLBY: So for example, if the employees in the
ds aren't paid -- and I'm definitely not a Dutch
ut the consequences of that is they can leave, they
employment elsewhere and they're not bound by the
any sort of noncompetition terms. So, whereas I think
een a lot of frankly pretextual claims about leakage
secrets and things that we've been litigating on a
track, this presents potentially a genuine concern
c.

And if the employees leave, it may be very hard, if at all, to get them back. Similarly, unpaid employees by understanding, force of bankruptcy. So we could bankruptcy or liquidation or something like that at the level in the Netherlands very soon. And then finally, as you've heard --

THE COURT: Which may be more beneficial to your
Let's be honest. Go ahead.

THE CLERK: I --

THE COURT: Go ahead.

MR. COLBY: Yeah. And then, finally, you know, the
ny there has had some longstanding outstanding taxes

1 due. They're on a payment plan, but if the scheduled payments
2 are missed, the Dutch authorities can demand immediate payment
3 of all of it, not just the payment that was missed. That's
4 like another two million Euros. And so that is an additional
5 thing that could very quickly tip those entities into an
6 involuntary bankruptcy proceeding.

7 So the consequences are quite serious. The decision
8 was not taken lightly, but absent some meaningful, you know,
9 steps forward that I think we've been working towards and in
10 some clarity along the lines of what --

11 THE COURT: That's not to say that your client may --
12 I mean, I have not made a decision yet. I'm still weighing the
13 facts. Sort of have an idea where I'm going, but I haven't
14 decided, so that's to say maybe your clients may not like my
15 decisions. Maybe they may love my decision. I don't know what
16 my decision is yet, so I'm not quite sure whether it's going to
17 make a difference one way or another.

18 MR. COLBY: They're not make -- yeah, not making any
19 assumptions in that regard.

20 THE COURT: No. No. I'm say -- no. What I'm saying
21 is that they're saying, you know, absent some sort of decision,
22 which we haven't gotten, we have to make this call.

23 MR. COLBY: A decision would be -- right. A decision
24 would give them --

25 THE COURT: Better --

1 MR. COLBY: -- a view as to how to the next --

2 THE COURT: How do you want -- a better view --

3 MR. COLBY: -- step of the process.

4 THE COURT: Right.

5 MR. COLBY: So it would, in fact, be an informed
6 decision, rather than this, you know, kind of state of
7 purgatory that they're living in at the moment. So --

8 THE COURT: Okay.

9 MR. COLBY: -- it's -- they've just had enough and
10 can't continue to, you know --

11 THE COURT: I get it.

12 MR. COLBY: -- write those checks.

13 THE COURT: I get it. I get it. Okay. So what
14 you're saying is that by December 1st, there will be no
15 money --

16 MR. COLBY: Correct.

17 THE COURT: -- with respect to funding the -- because
18 they're not on the Debtor directly. They're not --

19 MR. COLBY: Correct.

20 THE COURT: -- or not -- or technically because
21 really, they're not even at the operational level. You're down
22 at the operational level of the subs.

23 MR. COLBY: Of the subs, right.

24 THE COURT: Who are not in bankruptcy.

25 MR. COLBY: They are not in bankruptcy. It's

1 pursuant to that note we talked about back in --

2 THE COURT: Right.

3 MR. COLBY: -- April.

4 THE COURT: Your claims against those and whatever --

5 MR. COLBY: But it's --

6 THE COURT: -- get -- maybe you guys can go ha --

7 never mind -- hash all that out in bankruptcy in the

8 Netherlands, but it is what it is.

9 MR. COLBY: Gotta help us, Your Honor.

10 THE COURT: I don't think you can avoid --

11 MR. COLBY: Gotta help us.

12 THE COURT: I don't think you can avoid, even with a
13 bankruptcy in the Netherlands, ultimately, the ownership issue.

14 MR. COLBY: Oh, yes.

15 THE COURT: That has to be resolved some way.

16 MR. COLBY: Yeah. I mean, look, our -- the secured
17 creditor status as secured creditors here isn't going to
18 change, but the financing of the entities --

19 THE COURT: The asset. The --

20 MR. COLBY: -- where I think the parties think
21 there's real value, that something that's been happening on
22 sort of an unofficial basis and it just -- there's no appetite
23 for them to continue that right now.

24 THE COURT: Okay.

25 MR. COLBY: Thank you.

1 THE COURT: All right, Mr. Zahralddin, you've heard
2 all that.

3 MR. ZAHRALDDIN: I did, Your Honor.

4 THE COURT: Uh-huh.

5 MR. ZAHRALDDIN: It's never an easy thing. Your
6 Honor, I would like to address one thing. Maybe we can deal
7 with the employee motion. We submitted a revised order --

8 THE COURT: For which one?

9 MR. ZAHRALDDIN: For the employee motion. And --

10 THE COURT: The employee motion?

11 MR. ZAHRALDDIN: Yes, ma'am. We --

12 THE COURT: Well, I'm a little confused on that one.

13 MR. ZAHRALDDIN: Well, I'd like to explain it to
14 you --

15 THE COURT: Uh-huh.

16 MR. ZAHRALDDIN: -- if you'd like. So when we first
17 started, we were trying to get our arms around -- we don't have
18 any of the books and records. Many of them are still kept in
19 the SeeCubic BV servers and also in other servers or in
20 laptops. There's all kinds of historical data. So we filed
21 this as a typical motion to try to keep our employees and our
22 independent contractors together. Since that time, we've been
23 able to parse all that out.

24 And our big issue that remains because Mr. Rajan was
25 the only employee that would have straddled the petition date,

1 so he has decided to waive any sort of priority or anything
2 that would have accrued pri -- right before the petition date
3 and then maybe was in transit. So he's -- we've taken that out
4 of the order. We really simply need the order, so we can go
5 back and make sure we have authority from the Court to assess
6 and we'll work with the US Trustee. We've, you know, briefly
7 discussed these issues with him, assess if there were any
8 issues when the takeover scheme occurred after the omnibus
9 because you know, about 30 percent of the employees went over
10 to SeeCubic, the new co. The rest were kind of in limbo, ended
11 up with VSI, but there was still probably withholding
12 potentially that was left over, so we want to just be able to
13 go sort that out.

14 THE COURT: What does that have -- I mean, first of
15 all, employees under the code goes back how far? So those
16 employees were not -- they would not have a claim as employees
17 because they would be outside of the time period. So I'm
18 trying to figure out how this is --

19 MR. ZAHRALDDIN: It's not the claim for the -- they
20 would have a claim to withholding, which is not property of the
21 estate and so we wanted to at least invest --

22 THE COURT: Well, wouldn't they just have a regular
23 claim?

24 MR. ZAHRALDDIN: Not for withholding. It's not
25 property of the estate, so we have to look at the taxing

1 authorities. We just --

2 THE COURT: But it still --

3 MR. ZAHRALDDIN: -- wanted authority to handle that.

4 THE COURT: -- even if it's, you know, the
5 withholdings that you took from their paychecks is what you're
6 talking about.

7 MR. ZAHRALDDIN: Well, or that were swept by SeeCubic
8 when they took all the cash out of the account.

9 THE COURT: Well, what is that -- so how does that
10 author -- why am I authorizing you to pay anybody for anything?

11 MR. ZAHRALDDIN: We're not asking for payment. We
12 took those provisions out. We're asking --

13 THE COURT: Well, what are you asking for?

14 MR. ZAHRALDDIN: We're asking to investigate and
15 review and if there is property of the estate that -- if
16 there's property of these employees that are not property of
17 the estate, we want to sort that out, work with the US Trustee
18 and get that sorted out.

19 THE COURT: So what am I --

20 MR. ZAHRALDDIN: That's a liability.

21 THE COURT: So -- but this isn't what this order --
22 what this motion was was --

23 MR. ZAHRALDDIN: We removed any payment of
24 prepetition amounts, other than something that wasn't property
25 the estate and we simply asked for the course comfort order

1 piece of it. That's really all that's in the new order.

2 THE COURT: Well, that wasn't what was in the motion,
3 so what's before me is something -- what you're asking me --

4 MR. ZAHRALDDIN: It --

5 THE COURT: -- for is something that -- did you tell
6 the other si -- when I say the other --

7 MR. ZAHRALDDIN: Ma'am, it was in the motion. We
8 defined withholding liabilities as part of it -- it was in the
9 motion.

10 THE COURT: Where?

11 MR. ZAHRALDDIN: Yes, ma'am.

12 THE COURT: Tell me where because I read this motion
13 and according to what I understood, you were asking -- where
14 are my notes? On this employee motion, you asked for a couple
15 of things. You asked for a motion to pay the employees of
16 SeeCubic BV, which apparently you're not asking me anymore.
17 The United States -- in the United States, you were seeking to
18 rehire nine Stream employees that purportedly left after the
19 Chancery Court's omnibus decisions and are now employed by VSI.

20 And in connection with rehiring them, you seek to pay
21 those employees approximately 30k in prepetition wages. I
22 don't even know how that works because they won't even fit in
23 the A4 calculation. They wanted to pay independent servicers
24 approximately 30K for prepetition amounts. And then you
25 want -- in ongoing, you wanted 10k per month post-petition.

1 MR. ZAHRALDDIN: No, Your Honor. We revised that
2 based upon the passage of time. We filed the notice with a
3 revised order. We put a blackline against the order. That was
4 filed at Docket Number 474. And we have curtailed and pared
5 down what we're asking for.

6 THE COURT: But what I told, the Netherlands is out.
7 The stuff for the U.S. is out that. You had them divided by
8 Taiwan. You wanted to rehire three employees and that you
9 wanted to pay them post-petition payroll, which that's a
10 different issue. I'm not quite sure, you know, is this
11 ordinary course. I don't know.

12 MR. ZAHRALDDIN: We simply indicate this was the
13 relief we asked for. Continue to honor and pay all pre-
14 petition employee obligations, the ordinary course of business
15 they come due. The only employee obligation that remains,
16 because there was only one employee, Mr. Rajan, would be any
17 withholding from prior employees. That was one of the defined
18 terms that is encompassed by employee obligations. We asked to
19 honor and continue any programs and practices with respect to
20 employee obligations that were in effect as of the petition
21 date.

22 Those are simply going to be medical. We want to
23 have continuity in any sort of medical or perhaps there may be
24 a retirement account, et cetera. We just need to sort that
25 out. We're not asking to pay prepetition amounts. We're just

1 saying we'd like an order to move forward on this. And we --

2 THE COURT: Move forward on what?

3 MR. ZAHRALDDIN: We have employees that have been
4 hired and are coming over already and we have existing health
5 plans that we want to integrate them into.

6 THE COURT: So wouldn't you have to file a motion to
7 assume or continue to the health plans? I don't see that in
8 here. I don't even --

9 MR. ZAHRALDDIN: No. We had them on prior health
10 plans in VSI. Now we're opening up new health plans in the
11 ordinary course at Stream.

12 THE COURT: So what do you need my approval for, for
13 ordinary course?

14 MR. ZAHRALDDIN: I can take all the ordinary course
15 out and then we want to be able to deal with the issue of
16 investigating and getting the --

17 THE COURT: Who's -- why do you need my approval to
18 investigate anything? Aren't you obligated to do that
19 notwithstanding --

20 MR. ZAHRALDDIN: We are obligated to do that, but
21 again --

22 THE COURT: So --

23 MR. ZAHRALDDIN: -- this is what we asked for at the
24 very beginning --

25 THE COURT: Well --

1 MR. ZAHRALDDIN: -- because there was more
2 uncertainty.

3 THE COURT: -- you can -- there's nothing wrong with
4 asking --

5 MR. ZAHRALDDIN: Okay.

6 THE COURT: -- but whether I'm giving is a whole
7 different.

8 MR. ZAHRALDDIN: Your Honor, if -- that's fine. If
9 you believe these are in the ordinary course, we will withdraw
10 the motion.

11 THE COURT: Well, no. I'm asking you do you believe
12 because obviously you asked me, do you thi -- I mean --

13 MR. ZAHRALDDIN: I do believe that these are in the
14 ordinary course, ma'am.

15 THE COURT: All right. That then Mr. Caponi, did you
16 guys file an objection to that?

17 MR. CAPONI: We did, Your Honor.

18 THE COURT: And what was your objection?

19 MR. ZAHRALDDIN: They don't want the case to go
20 forward. That's all.

21 THE COURT: Well, we already know that.

22 MR. CAPONI: We objected to what they filed. I'm --
23 like what I'm hearing here is like bizarro land. I'm not sure
24 exactly how to respond, but --

25 THE COURT: You guys in these -- you guys love to

1 like, use these colorful -- you use bizarro. He uses -- what
2 was the word that he said that I think I've heard through the
3 pleadings, through the -- I can't think I can't think of the
4 word that the Debtor believes that your clients did to them. I
5 don't know what the --

6 MR. CAPONI: I mean, Your Honor --

7 THE COURT: -- whatever it is, but you guys love some
8 colorful language here.

9 MR. CAPONI: I'm a colorful person, but we have --
10 I'm grounded by reality and unfortunately, I view this as
11 not -- I'm being asked to ignore reality. The -- Stream did
12 not exist as a result of the omnibus order.

13 THE COURT: They existed, but they didn't operate.

14 MR. CAPONI: They -- right. I mean, I mean, no
15 employees, no operations, no bank accounts. They immediately
16 then come into bankruptcy and I'm hearing about we want to
17 rehire employees because they were owed money. They last work
18 for Stream three years ago at the latest. Health plans would
19 have been three years ago. We're bringing stuff over from VSI,
20 so you want to do something with Mr. Rajan's -- an insider's
21 controlled entity with no disclosure and we're getting this, I
22 filed one motion but now on the eve of the hearing, I got a
23 different order.

24 And do I think that starting a health plan for a
25 company that never had a health plan as ordinary course? No.

1 How could it be? The ordinary course of Stream, before it
2 filed this bankruptcy, was a piece of paper. It had no assets
3 or anything. And we see from the monthly operating reports, no
4 employees, no income, no revenue, no contracts. So that's why
5 I say bizarre. I know the Debtor can stand up here and say
6 we've got this great organization going, but history and the
7 documents say that's doesn't exist.

8 THE COURT: Right.

9 MR. CAPONI: So my response is this doesn't make any
10 sense.

11 THE COURT: Well, I was a little -- not -- I'm not
12 going to use the word does not make a little, but I was
13 confused because if the Debtor didn't have any of these things
14 prepetition, I'm assuming that's why they were asking me to
15 authorize them to start this post petition, because ordinary
16 course means you continue as you operated prepetition, which is
17 why I thought that this is why you filed this because there was
18 no employees, no benefits, no any of those things prepetition.

19 MR. CAPONI: Yes.

20 THE COURT: And so you're not continuing on a
21 ordinary course. You're starting something new. Now, you may
22 have had it prepetition years ago, but prepetition immediately
23 before the bankruptcy did not exist. So you now need some
24 ability to say we didn't have this prepetition. We want to
25 start it now. And what I'm hearing is you said three years

1 ago -- I don't know if Mr. Zahralddin agrees with you or not,
2 but it did not. There were no employee plans, there were no
3 employees, there were -- there was nothing at the time the
4 bankruptcy was filed.

5 So from my perspective, I thought this is why this
6 was being filed because you cannot make an ordinary course. I
7 mean, you could make that this is what these companies do in
8 the ordinary course and therefore we want to just do what these
9 companies do. But when you start bringing in, we want to
10 continue something that they had, that didn't exist, so how I'm
11 going to continue something that did not exist?

12 MR. CAPONI: And then the Debtor stands -- counsel
13 stands up and says, you asked, is this ordinary course? I
14 don't know. What do you think? Maybe. Yeah, we think it's
15 ordinary course. So you can start a plan. I mean, it's
16 actually funny, because this morning, my wife called me to say
17 we have to sign up for our health care plan.

18 THE COURT: Yes. It started yesterday.

19 MR. CAPONI: Right. There's nothing ordinary course
20 about even resigning up for the plan I had last year. It is
21 like a painful exercise --

22 THE COURT: Well, if you --

23 MR. CAPONI: -- let alone if I was inventing a new
24 one.

25 THE COURT: -- don't sign up, some things are

1 automatic. Some you get terminated.

2 MR. CAPONI: Yeah. And --

3 THE COURT: I've got to do mine, too.

4 MR. CAPONI: So the Debtor's funding through an
5 insider transaction with no disclosure that they consider that
6 ordinary course. And that's why I say bizarre.

7 THE COURT: Well, that's not be -- that's a whole --

8 MR. CAPONI: No, it's not, but --

9 THE COURT: -- different issue.

10 MR. CAPONI: -- the Debtor's --

11 THE COURT: Right.

12 MR. CAPONI: -- the Debtor's view of what constitutes
13 ordinary course appears to be whatever we feel like doing. Mr.
14 Zahralddin just said we're onboarding employees now. Well, for
15 eight months, they had no employees and now they're onboarding
16 without court approval. Apparently they think hiring employees
17 is ordinary course.

18 THE COURT: Well, the whole thing is how does a
19 company operate without employees? And do you need to come and
20 say we want to hire employees because we want to continue to
21 operate? I don't think there's anything out of the -- that
22 would say that's not ordinary course to hire employees. We --

23 MR. CAPONI: When you never had them, it's not
24 ordinary course.

25 THE COURT: Well, but they did have them and so --

1 and it doesn't make any sense to say a company is supposed to
2 operate without employees. I mean -- and so you look at as a
3 whole. Is it ordinary course for a company to employ
4 employees? I think that -- how else you function. But what I
5 don't think is ordinary course, to say, well, we had this in
6 the past, so now we want to give it to them now.

7 MR. CAPONI: Well, Your Honor, you hit the point and
8 this is -- you know what -- you're coming at it from the left
9 side or the right side. We come at it from the right side,
10 which is a Chapter 11 is to reorganize a company.

11 THE COURT: Uh-huh.

12 MR. CAPONI: The Debtor comes at it and the Chapter
13 11 is where I get to form and build a company. And we think
14 the fact that you've never had them is why we filed our motion
15 in the first place. To ignore that and -- where we -- this is
16 where we just fundamentally disagree with the Debtor. This is
17 not where you come to raise money for the first time, hire
18 employees. I don't care what you did ten years ago. It's what
19 you're doing, you know, what you did prior to the bankruptcy.

20 THE COURT: Well, but the difference is, and we have
21 to take into consideration why the Debtor did not have
22 employees. It did not have employees because the Chancery
23 Court made a certain decision and then that decision was
24 reversed. So I can't ignore that the Debtor now wants to
25 start -- once that decision was overturned or whatever

1 happened, say we want to go back to the status quo. Is the
2 status quo ante?

3 MR. CAPONI: Status quo ante.

4 THE COURT: Oh, look at that, looking at my
5 daughter's study for the Bar. Because tell me I don't know
6 that off the top of my head. But so what their -- so I
7 understand from their perspective is, but for that erroneous
8 and in their opinion, erroneous. I think they used some other
9 word. I don't think they say stole, but equates to that. I --
10 whatever. But putting that in perspective, if that is undone
11 by when the Supreme Court of Delaware said, no, you shouldn't
12 have done that and it shouldn't have been whatever it is. The
13 Debtor no longer able to be in control and function.

14 I can't say, well, the Debtor, the Debtor is coming
15 into bankruptcy and saying this is what happens. We want to
16 get back to where we were. We want an opportunity to build, to
17 save the company and we're saving the company in the context
18 that somebody took everything, when they shouldn't have. They,
19 meaning the Court made an erroneous decision and so if you go
20 back to where we were without that erroneous decision, we had a
21 company that was operating and we just want to do that again.

22 MR. CAPONI: Well, Your Honor, except for Mr. Rajan
23 has testified and everyone's acknowledged, Stream was always a
24 holding company and remains a holding company.

25 THE COURT: Okay.

1 MR. CAPONI: Everything that operated was way below
2 it. It never had employees. And the --

3 THE COURT: So that's a whole --

4 MR. CAPONI: -- Supreme Court of Delaware and the
5 Court of Chancery -- you know, again, apples or oranges. It's
6 like, oh, you took the company from us. We were harmed. Well,
7 only because everyone found and the Supreme Court affirmed you
8 borrowed money and never repaid.

9 THE COURT: Oh --

10 MR. CAPONI: It's called natural consequences.

11 THE COURT: Okay. I get that, but --

12 MR. CAPONI: I'm not paying your bills.

13 THE COURT: -- we -- what we're focusing on right now
14 is that what I'm hearing you say is they never had any
15 employees, so why are you going to come and ask me for
16 authority to pay employees? Either they did or they didn't.

17 MR. CAPONI: Right. It was always a holding company.
18 And --

19 THE COURT: So who are these people that left and
20 didn't work anymore?

21 MR. CAPONI: It -- it's --

22 THE COURT: That's what I'm saying.

23 MR. CAPONI: It's --

24 THE COURT: Now I'm getting into evidence and I can't
25 do this.

1 Yes, Mr. Zahralddin?

2 MR. ZAHRALDDIN: Your Honor, okay, it's almost 1:00.

3 THE COURT: Well, we're going to --

4 MR. ZAHRALDDIN: I simply asked for -- look, from the
5 very beginning, we're supposed to have an automatic stay.
6 There's nothing in Fulton that says that they are allowed to
7 keep things. It only says that they're not penalized for
8 those. We have plenty of Circuit Court opinions that we've
9 cited that indicate that not even adequate assurance do we have
10 to wait for. They have to turn everything over. We don't have
11 books and records.

12 We don't have anything to go back. So, yes, we have
13 had independent contractors working. We filed a plan. We have
14 investors. We have orders. We have all of these things. I'm
15 asking for a CFO. I keep getting complaints about we're not
16 filing these things. We don't have -- we're not getting our
17 monthly operating reports done, et cetera. It's one person
18 with independent contractors. I need employees to come in.

19 THE COURT: So you need --

20 MR. ZAHRALDDIN: I need a CFO.

21 THE COURT: So you need me to tell you that in order
22 for this company to operate, you need employees?

23 MR. ZAHRALDDIN: We --

24 THE COURT: What I'm struggling is, I'm not --
25 anything that is not. If they have claims against the estate,

1 they assert the claim. I don't know if they have withholding
2 claims.

3 MR. ZAHRALDDIN: And --

4 THE COURT: I'm not entering an order without any
5 evidence, without -- you know, if you believe that this company
6 needs employees to operate, I will say on the record that's
7 ordinary.

8 MR. ZAHRALDDIN: Okay.

9 THE COURT: You go employ people.

10 MR. ZAHRALDDIN: Absolutely. Thank you, Your Honor.
11 We will move --

12 THE COURT: But with respect to me approving how much
13 you pay, you know, I don't know. The Debtor didn't have any
14 employees at the time. Did they? Yes, Mr. Caponi?

15 MR. CAPONI: They -- this is Document 48. This is
16 the first day declaration filed by the Debtors and counsel
17 here. Quote,

18 "Stream. Ashkaya (phonetic), Technovative USA, Media
19 Holdings, Ultra D Ventures, Ultra D Cooperative and
20 Technology Holdings are holding companies. Stream TV
21 International and SCBV are operating companies."

22 So this is the De -- this is, again, when I say about
23 a little bit of a bizarro land. The Debtor files a document
24 acknowledging it's a holding company and then starts filing all
25 kinds of motions saying I need to rehire people --

1 MR. ZAHRALDDIN: Your Honor --

2 MR. CAPONI: -- and contradicting its own first day
3 declaration.

4 MR. ZAHRALDDIN: -- as Mr. Caponi brings up often,
5 this was done on the eve of a trial. We received this file
6 more -- no more than ten days beforehand with -- even though
7 I'd been at a prior firm, we were involved for a few weeks, I
8 had no knowledge, nor did anyone at my firm of the voluminous
9 activity that occurred below. We knew there was an emergency.
10 We filed what we filed, then we struggled and put together
11 books and record -- schedules and statements without books and
12 records.

13 So Mr. Caponi can say all he wants about, you know,
14 things that we said back then. We have updated our schedules.
15 We're in the process, after working with the US Trustee and
16 continuing to update schedules, MORs, et cetera. And we have
17 employees we want to bring on. I can withdraw that motion. I
18 appreciate what you said on the record.

19 I would like to get Mr. Park put onboard because
20 we've now filed two motions to employ him. We worked with the
21 US trustee, got him retained as a three -- under three -- or
22 got him an application under 330. And we would like to bring
23 that to fruition. We have a -- any concerns that were placed
24 in the original objections about him will be addressed when he
25 gets paid under a fee application process.

1 We need to bring someone else in who can, who can get
2 up to speed and act. He has been looking at projections and
3 doing work for free this entire time, but he will not get paid
4 one red dime, one red cent, excuse me or one silver dime.

5 THE COURT: Silver dime.

6 MR. ZAHRALDDIN: Right. One silver dime, until you
7 approve it. So we would like to have that relief. We now also
8 have a -- Mr. Stastney, right after Mr. Rajan testified that
9 the SeeCubic website and name were of the Debtors and had been
10 taken during the aftermath of the Chancery Court. He went and
11 filed an application two -- how many days later?

12 UNIDENTIFIED SPEAKER: Two.

13 MR. ZAHRALDDIN: With the trademark office and he
14 cited the reason that he had rights to that, the invalidated
15 omnibus agreement, which was also attached to an earlier
16 application. I --

17 THE COURT: And all of this, I don't know. All of
18 this -- all I can tell you is --

19 MR. ZAHRALDDIN: It's in our papers.

20 THE COURT: -- I will tell you, I am very concerned
21 about the evidence that I have seen with respect to that
22 website. I don't know whose client -- Mr. Stastney's counsel
23 isn't here. At least, I haven't seen him. I haven't seen
24 anybody here, but if you think I'm not concerned about that,
25 everybody better rethink that situation. I saw what I saw.

1 That caused me some concern.

2 MR. ZAHRALDDIN: And again, Your Honor, it is --
3 we've talked to our trademark folks. If you file a falsified
4 trademark application --

5 THE COURT: I don't want to hear any of that. I
6 already told you what my concern is --

7 MR. ZAHRALDDIN: Okay. I understand. Noted.

8 THE COURT: -- and I don't know who owns it. The
9 Debtor says they own it. It was -- it trademarked to somebody.
10 I don't know who it was tradmar --

11 MR. ZAHRALDDIN: Well, the only rationale --

12 THE COURT: All I'm telling you --

13 MR. ZAHRALDDIN: Yeah.

14 THE COURT: -- is if it wasn't trademarked to
15 SeeCubic, Inc, and they -- I saw -- it said what it said. I'm,
16 and I'm not sure --

17 MR. ZAHRALDDIN: But what --

18 THE COURT: -- said what it said. I'm just telling
19 people, if it doesn't belong to you and you're using it, you
20 got consequences --

21 MR. ZAHRALDDIN: And those --

22 THE COURT: I don't know what --

23 MR. ZAHRALDDIN: And the consequence --

24 THE COURT: -- they are, but counsel --

25 MR. ZAHRALDDIN: I hear you.

1 THE COURT: I'm telling you, I have to -- as I said,
2 I have a very -- a personal matter that is very dear to me --

3 MR. ZAHRALDDIN: I understand, Your Honor.

4 THE COURT: -- that I have --

5 MR. ZAHRALDDIN: I understand.

6 THE COURT: -- to -- I have to be at. And I'm
7 supposed to be there by 1:00, so I was actually going to start
8 in there like where are you. And it's going to take me a
9 little bit to get to the cemetery, so I really need to --

10 MR. ZAHRALDDIN: I understand, Your Honor. Your
11 Honor, I -- can I -- is it possible to talk to Ms. Godfrey and
12 reschedule some of these matters? I'll withdraw the ones that
13 we believe --

14 THE COURT: Right. Withdraw the ones with respect to
15 Mr. Park, reschedule. We can --

16 MR. ZAHRALDDIN: You mean withdraw --

17 THE COURT: I would love to tell you --

18 MR. ZAHRALDDIN: -- the employees, right?

19 THE COURT: Right. And I would love to say we can do
20 this by telephone, but if I'm going to get evidence, if you
21 guys stipulate to some stuff and say, I -- you know, you can --
22 what I have done and I don't know how I could do it on this, is
23 I have -- I'm in the courtroom. It says it has to be open to
24 the public.

25 MR. ZAHRALDDIN: Uh-huh.

1 THE COURT: So I'm here because actually when I went
2 to get a permit yesterday, I was talking to the guard and he
3 was like, you know, I said, I work in the cour -- I don't like
4 to tell people. But anyway, and he's like, you know, anyway,
5 he's trying to do something. He said, well, can I come in
6 there? I said it's open to the public. You can just walk in.
7 That's the idea. But yesterday I did allow counsel to appear
8 by Zoom, but I don't know how many people we could get on here.

9 Not many right, John?

10 UNIDENTIFIED SPEAKER: Well, it just starts to get
11 confusing, if they need to see people this way.

12 THE COURT: Right.

13 UNIDENTIFIED SPEAKER: But yesterday was convenient,
14 because it was one attorney facing one witness --

15 THE COURT: Right.

16 UNIDENTIFIED SPEAKER: -- and you.

17 THE COURT: So that means if the parties can work it
18 out that only some people come in the courtroom and some are on
19 the Zoom, I'm amenable to that.

20 MR. ZAHRALDDIN: I have no pro -- for example, if Ms.
21 Westbrook doesn't want to travel from North Carolina or if Mr.
22 Colby doesn't want to travel down. Mr. Caponi, he's out of
23 luck, since he's here around with us, but --

24 THE COURT: He's -- you're in New York, right?

25 MR. ZAHRALDDIN: No, he's --

1 don't you get some dates? Send them to Mr. Zahralddin, Mr.
2 Caponi, Mr. Colby.

3 MR. ZAHRALDDIN: And I can't remember from Alex --
4 and then Mr. Wright, I think would be the round off the --

5 THE COURT: I don't recall. I know he's not here --

6 MR. ZAHRALDDIN: Right.

7 THE COURT: -- only because I know the players. So
8 why don't you do that and then we'll set a date as soon as
9 possible. If the parties can streamline what is in dispute,
10 then you can submit a stipulated -- of undisputed facts and
11 then disputed facts, that will streamline everything. People
12 don't have to come in from flying from wherever you're flying
13 in from. Although I'm happy to see you, I think it's a more
14 efficient use of everybody's time.

15 MR. ZAHRALDDIN: Yes. And Your Honor --

16 THE CLERK: Judge?

17 THE COURT: Yes.

18 MR. ZAHRALDDIN: Sorry. Go ahead, Ms. Godfrey.

19 THE CLERK: We have a hearing on Monday the 27th on
20 the adversary, the motion for preliminary injunction.

21 THE COURT: A continued hearing on that?

22 MR. ZAHRALDDIN: Yes, ma'am.

23 THE CLERK: It's a trial, correct.

24 THE COURT: And --

25 THE CLERK: It is actually in -- trial.

1 THE COURT: Can we do all of those at the same time?
2 I don't know.
3 THE CLERK: I guess that's a question for counsel.
4 Can we?
5 THE COURT: What did you say?
6 (Court and clerk confer)
7 THE COURT: So we have the 27 and the 28 is what
8 you're saying?
9 THE CLERK: I don't know if we have the 28th --
10 THE COURT: Do we have the 20 --
11 THE CLERK: We have the 27th. I don't have them --
12 let me see. Do I have the 28th? I don't have them on for the
13 28th, but we could probably put them on in the afternoon at
14 12:30.
15 THE COURT: All right. So why don't you guys
16 consult? I really do have to adjourn for the day. Okay. So
17 reach out to Ms. Godfrey. We'll try to work this out. I
18 think -- I think we had closed the record on the preliminary.
19 I can't even think right now. Have we closed the record?
20 THE CLERK: Yeah.
21 MR. ZAHRALDDIN: I don't think so. I think we had --
22 THE CLERK: Yeah.
23 MR. ZAHRALDDIN: -- continued cross. I can't
24 remember on who. Mr. Colby, do you know?
25 MR. COLBY: We have rebuttal.

1 MR. ZAHRALDDIN: Yeah. Mr. Michaels has also not
2 been put up yet.

3 MR. COLBY: Yeah. So there -- I think a couple of
4 witnesses left.

5 THE COURT: Right. And hopefully I'll get some
6 answers on that website in the rebuttal. I'm looking for that
7 because it's --

8 MR. COLBY: I'm anxious to tell you, but I won't do
9 it right now.

10 THE COURT: Right. I definitely -- as it caused some
11 concern. I have not concluded anything yet. Just simply
12 saying it's a cause for concern.

13 MR. ZAHRALDDIN: Your Honor, I know you have to run.
14 I do have two things I have to quickly address.

15 THE COURT: Uh-huh.

16 MR. ZAHRALDDIN: I would like to get some sort of
17 finality on our fee apps. I'd like you to please, if --

18 THE COURT: I'm not doing that. I --

19 MR. ZAHRALDDIN: No, no, no. Not today. Not today.
20 But I need to get some sort of finality because we are happy to
21 address any sort of actual real -- I've never seen an objection
22 like this. I'd like to have you take care of it, because this
23 type of blanket objection is exactly what the Supreme Court in
24 Sarco said would be a problem. People would weaponize the fee
25 application process. We may have a disagreement as to which

1 way the case should go, but that should not mean --

2 THE COURT: Well, then --

3 MR. ZAHRALDDIN: -- denying fees.

4 THE COURT: -- guys, give me some briefs on that
5 issue. If you believe it's a general objection that doesn't
6 have any merit and why I shouldn't consider it, then give me
7 some -- when we have a hearing, maybe a day before, two days
8 before, some brief on that.

9 Counsel?

10 MS. WESTBROOK: Your Honor, Margaret Westbrook. I
11 disagree that we had general. We made very specific objections
12 about who's paying the fees and the disclosure of that.

13 THE COURT: Okay.

14 MR. ZAHRALDDIN: And we had a response that laid
15 out --

16 THE COURT: Right.

17 MR. ZAHRALDDIN: -- everything in the docket that
18 says that. So we have briefed that issue.

19 THE COURT: So I think --

20 MS. WESTBROOK: And it's in contradiction to the
21 supplemental disclosure that the Debtors made with respect to
22 their retention, that no other third party was paying their
23 fees. So I really don't -- I'm really concerned about the
24 resources entailed in filing a whole nother (sic) brief on that
25 when I feel like --

1 THE COURT: Well, then you just come ar --

2 MS. WESTBROOK: -- that's pretty well spelled out.

3 THE COURT: -- you just come argue. And -- but if
4 the party -- and you know, I will -- I mean, we actually go
5 through all of these and I -- we identify the I -- the issues
6 that we think -- you know, I don't know what people are really
7 going to -- I can only look at what your papers say and try to
8 be prepared, but sometimes I get things that are not even on
9 there. So if you believe that you're going to come and just
10 argue that we need to argue before we even get to the merits of
11 the time. So everybody believes it's just legal argument?

12 Mr. Caponi, You stood up --

13 MS. WESTBROOK: I think it's a legal and disclosure
14 issue.

15 THE COURT: Okay.

16 MR. ZAHRALDDIN: Okay. Your Honor, we have
17 disclosed. We followed the rules here, right.

18 THE COURT: All right. Woah, woah, woah, woah.
19 We're not arguing that today.

20 MS. WESTBROOK: And a disinterested issue.

21 MR. ZAHRALDDIN: I --

22 THE COURT: All right. So --

23 THE CLERK: Judge, this is Eileen again. On the
24 adversary action, there's a couple motions to dismiss that have
25 been filed, but counsel has not filed -- they filed a notice

1 but did they not schedule it for a hearing.

2 THE COURT: All right. This is what we're going to
3 do.

4 MR. ZAHRALDDIN: We're waiting on your order for
5 that, Your Honor --

6 THE COURT: Right.

7 MR. ZAHRALDDIN: -- for the scheduling.

8 THE COURT: Because typically we -- you file, we
9 schedule a hearing date and we give it out. This is not one
10 that automatically you can call online.

11 MR. ZAHRALDDIN: We didn't set those. Those were --

12 THE COURT: Right. You can't --

13 MR. ZAHRALDDIN: Yeah.

14 THE COURT: -- because it doesn't -- it's not like
15 you can go on the line and get it.

16 MR. ZAHRALDDIN: Understood.

17 THE COURT: So this is --

18 MR. ZAHRALDDIN: We followed that rule.

19 THE COURT: -- what we're going to do because I
20 really do have to go. We are going to get some dates and then
21 we'll sort out what we're going to hear. Okay? Because some
22 of this, you know, payment of fees and all, I mean, I don't
23 know the rush for that except I guess you want it before the
24 end of the year. Everybody does. I get it. I practiced once.
25 I don't know if I need to get to -- there -- I mean, to be

1 perfectly honest, the fee application was one that I said, I'm
2 not even dealing with today.

3 That was one I'm like, no, that's off the table. And
4 the only two that I really thought would be on the table was
5 the Mr. Park's and exclusivity. Those were the only two I
6 thought I was going to get to today, none of which I have.
7 Exclusivity terminated yesterday, but I don't see anybody
8 running around trying to -- or express any interest, except I,
9 think Rembrandt said they might file one. We are where we are.

10 MS. WESTBROOK: We agree it's expired as well, Your
11 Honor.

12 THE COURT: It expired yesterday.

13 MR. ZAHRALDDIN: We -- Your Honor --

14 THE COURT: But that --

15 MR. ZAHRALDDIN: We think it's extended to whenever
16 you continue it to, so we can get a decision, at least.

17 MS. WESTBROOK: I don't think that's the rule in the
18 Third Circuit, Your Honor.

19 THE COURT: I -- we looked at that yesterday and from
20 what I determined it, it terminated. Doesn't mean I can't
21 extend it.

22 MR. ZAHRALDDIN: Correct.

23 THE COURT: Or that I can't make it beyond yesterday.
24 It just means that if somebody goes and files before I issue an
25 order, they have the right to do so. It's not like under 11-

1 29. With small businesses, it specifically says an order has
2 to be entered prior to the termination of exclusivity. That
3 rule doesn't apply and it doesn't say that and I think it means
4 something. So with that said --

5 MR. CAPONI: If you need to go, Your Honor, we're
6 figure this out amongst ourselves.

7 THE COURT: You'll figure -- okay. That concludes
8 that matters that are scheduled before the Court today and
9 court is adjourned until tomorrow at --

10 THE CLERK: 9:30.

11 THE COURT: -- 9:30. Okay. Tomorrow is Thursday.

12 MR. CAPONI: Thank you for your time, Your Honor.

13 THE COURT: All right. Yes. All right. Thank you.
14 It's the second the second anniversary of my daughter's death,
15 so --

16 MR. CAPONI: Sorry to hear that, Your Honor.

17 UNIDENTIFIED SPEAKER: Sorry to hear that.

18 THE COURT: -- I'm real anxious to get there. Thank
19 you.

20 (Proceedings adjourned)

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C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

John Buckley

John Buckley, CET-623
Digital Court Proofreader